

RemarksStatus of the Claims

Claims 1-41 were pending in the application and stand rejected. By this paper, claims 18 and 38 have been canceled without prejudice or disclaimer, claims 1, 3, 19, 21, 39 and 41 have been amended, and claims 42-46 have been added. For the reasons set forth below, Applicants submit that each of the pending claims is patentably distinct from the cited prior art and in condition for allowance. Reconsideration of the claims is therefore respectfully requested.

Claim Rejections - 35 U.S.C. § 103

Claims 1-18, 20-38, and 40-41 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,363,248 issued to Silverman ("Silverman") in view of U.S. Patent Application 2002/0152402 by Tov et al. ("Tov"). Further, claims 19 and 39 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Silverman and Tov and in further view of U.S. Patent Application 2003/0046705 by Sears ("Sears"). These rejections are respectfully traversed. As set forth below, Applicants respectfully submit that each of the pending claims is patentably distinct from the cited references, individually and collectively.

To establish a *prima facie* case of obviousness for a claim, the prior art references must teach or suggest all the claim limitations. See M.P.E.P. § 2143. Thus, to sustain the foregoing rejections of the claims, Silverman alone or in combination with Tov and/or Sears, must identically teach or suggest every element of the claims. The

Applicants respectfully submit that the cited references fail to teach or suggest the elements of the pending claims for the following reasons.

1. Sears is not prior art under 35 U.S.C. 102(e)/103

Applicants wish to bring to the examiner's attention that Sears may not be cited for obviousness under 35 U.S.C. 102(e)/103. "[S]ubject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention 'were, at the same time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.'" MPEP 706.02(k). Sears and the present application were both, at the time of invention, owned by the same entity, Digeo, Inc. of Kirkland, Washington.

Accordingly, Applicants respectfully request that the rejection of claims 19 and 39, based on Sears, be withdrawn. Similarly, new claim 44 includes subject matter that was rejected on the basis of Sears. Therefore, Applicants submit that claim 44 is also allowable. Further, claims 1, 21 and 41 have been amended to include a broadcast center configured to distribute programming content from content providers. As discussed in detail below, even though Sears must not be used as prior art, Applicants submit that amended claims 1, 21 and 41 would nonetheless be patentable over Sears and the other cited references.

2. Forwarding from a broadcast center

Applicants respectfully submit that Silverman, Tov, and Sears, either individually or when combined, do not teach or suggest receiving a video communication request at a broadcast center configured to distribute programming content from content providers

and forwarding the video communication request from the broadcast center to a communication device with a highest probability of being accessible to the recipient.

Silverman teaches a cellular phone used in a vehicle and a method of forwarding telephone calls to an alternate communication device that is nearest to the most recent active cell site. See, for example, Silverman, col. 3, line 28 to col. 4, line 9. Thus, the call is forwarded from a cellular office and not a broadcast center configured to distribute programming content from content providers. Further, Tov does not teach or suggest forwarding calls. Rather, Tov provides a subscriber with a personalized web page that allows visitors to view visitor specific information regarding the subscriber's availability to receive different types of communications. See, for example, Tov, page 2, paragraphs [0019] and [0024].

The Office Action references Sears to show that a communication node such as a set top box (STB), a cable head-end, an Internet server, and a satellite broadcast center are known in the art. Page 12. As discussed above, Sears may not be cited for obviousness under 35 U.S.C. 102(e)/103. However, even if Sears could be cited, Sears does not teach or suggest forwarding a call from such a communication node or broadcast center.

By contrast with the cited references, an aspect of the present invention is the ability to forward video communications from a broadcast center that is capable of receiving programming from content providers and packaging the programming together for transmission, for example, to customers' homes. Thus, video can be forwarded to, for example, interactive televisions or other devices in communication with the broadcast center.

Thus, Applicants respectfully submit that the cited references do not teach or suggest "forwarding the video communication request from the broadcast center to the first selected communication device," as recited, among other things, in amended claim 1. Similarly, the cited references do not teach or suggest "a forwarding component that forwards the video communication request from the broadcast center to the first selected communication device," as recited, among other things, in amended claim 21. Also, the cited references do not teach or suggest "means for forwarding the video communication request from the broadcast center to the first selected communication device," as recited, among other things, in amended claim 41. Accordingly, Applicants respectfully request that the rejection of claims 1, 21 and 41 be withdrawn.

3. Selection based on being logged in to a communication device

Applicants respectfully submit that Silverman, Tov, and Sears, either individually or when combined, do not teach or suggest selecting which communication device to forward a video communication to based on the intended recipient being logged in to the communication device. Referring to the vehicle-based cellular phone of Silverman, the Office Action states that "a communication device which the recipient is currently logged in is equivalent to a communication device which is turned on and the called party communication device is available." Page 4. However, Applicants respectfully disagree.

Regarding claims 3 and 42, Applicants respectfully submit that the cited references do not teach or suggest "selecting from the set of communication devices a communication device to which the recipient is currently logged in such that the recipient is authenticated as a user of the communication device," as recited, among

other things, in amended claim 3 and new claim 42 (emphasis added). Rather, Silverman merely teaches that the cellular phone is available when it is within range of a cell site and turned on. Therefore, Applicants respectfully request that the rejection of claim 3 be withdrawn and new claim 42 be allowed.

4. Selection based on the last communication device accessed

Regarding claims 4 and 45, according to the Office Action, Silverman teaches "selecting from the set of communication devices a communication device last accessed by the recipient," as recited, among other things, in claim 4 and new claim 45. Applicants respectfully disagree. Silverman teaches accessing the most recent active cell site (e.g., the last cell site to be in contact with the cellular phone). See, Silverman, col. 3, line 16 to col. 4, line 29. However, Silverman is silent as to determining which of the alternative communication devices was used last. Therefore, Applicants respectfully request that the rejection of claim 4 be withdrawn and new claim 42 be allowed.

5. Selection based on time usage pattern

Regarding claim 6, according to the Office Action, table 1 of Silverman "is equivalent to a usage pattern data which identifies communication devices to be used by the called party." Pages 5-6. However, Applicants respectfully submit that table 1 of Silverman is a mapping of each alternate communication device and its associated nearest cell site (see, col. 3, lines 28-43) and does not identify the times at which the communication devices are used. Therefore, there is not a pattern based on time that can be used to determine which of the alternate communication devices are available to the recipient of the call. Therefore, Applicants respectfully request that the rejection of claim 6 be withdrawn.

Similarly, regarding claim 46, Applicants respectfully submit that the cited references do not teach or suggest "storing usage pattern data identifying a set of times during which each communication device in the set of communication devices is used; receiving a video communication request at a first time, the video communication request addressed to the user; comparing the first time with the set of times to determine a first communication device of the set of communication devices with a highest probability of being presently accessible to the user; and forwarding the video communication request to the first communication device," as recited, among other things, in new claim 46 (emphasis added). Therefore, Applicants respectfully request that claim 46 be allowed.

Further, Applicants respectfully submit that claims 2, 5, 7-20, and 22-40, are allowable, among other reasons, as respectively depending, either directly or indirectly, from independent claims 1 and 21.

#### New Claims 42-46

Applicants submit that new claims 42-46 are each patentable for the reasons discussed in detail above and do not add new matter to the application. Therefore, Applicants respectfully request that claims 42-46 be allowed.

#### Conclusion

For at least the foregoing reasons, the cited prior art references, whether considered individually or in combination, fail to disclose each of the limitations in any of

the pending independent claims. For at least the same reasons, each of the claims depending therefrom are also patentably distinct from the cited prior art.

In view of the foregoing, all pending claims represent patentable subject matter.

A Notice of Allowance is respectfully requested.

Respectfully submitted,

**Digeo, Inc.**

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